

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2104 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHANABHAI @ BHIKHUBHAI RAMBHAI GADHAVI

Versus

POLICE COMMISSIONER

Appearance:

MR SK PATEL, Advocate for the Petitioner.

MR.U.R.BHATT, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 01/07/96

ORAL JUDGEMENT

Petitioner Dhanabhai @ Bhikhubhai Rambhai Gadhavi (hereinafter referred to as "the detenu"), by way of this petition under Article 226 of the Constitution of India, has challenged the order of detention dated 30-12-1995 passed by the Commissioner of Police, Ahmedabad City (hereinafter referred to as "the detaining authority") under section 3 (1) of the Gujarat

Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as " the PASA Act").

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on two criminal cases filed against the detenu being CR No. 457/95 and CR No. 459/95 under sections 324, 294 (b), 506 (1), 114, 397 of the Indian Penal Code and section 135 (1) of the Bombay Police Act. Both these cases are pending at the investigation stage. Over and above these criminal cases the detaining authority has also placed reliance on the statements of four witnesses for the alleged incidents of 2-12-1995 and 5-12-1995 wherein the allegations of extorting monies by pointing knife and beating the people have been made against the detenu. Considering these materials, the detaining authority was of the view that the detenu is a " dangerous person " within the meaning of section 2 (c) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is capable of being disposed of on the first submission made on behalf of the detenu by Mr. Patel. Mr. Patel pointed out that the privilege of not disclosing the identity of the witnesses under section 9 (2) of the PASA Act is not genuine as there is no verification of the statements of the witnesses either by the sponsoring authority or by the detaining authority.

Having seen the statements of the witnesses, I find that in fact there is no verification of the statements by the concerned officers. On mere reading of the grounds of detention, it is clear that the detaining authority has blindly relied on the statements of the witnesses without verifying the correctness thereof. If the facts stated in the statements by the witnesses are not verified by the detaining authority, the privilege claimed under section 9 (2) of the PASA Act of not disclosing the identity of the witnesses to the detenu is not genuine. This has, therefore, violated the constitutional guarantee under Article 22 (5) of the Constitution of India to make an effective representation. Therefore, the continued detention of the detenu has become illegal and void. The petition is therefore required to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 30-12-1995 is quashed and set aside. The detenu Dhanabhai @ Bhikhubhai Rambhai Gadhavi is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

o-o-o-o-o-o

True copy